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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1951.

No. 125

INEZ WHITE, et al.,

Petitioners,

vs.

CHICAGO LAND CLEARANCE COMMISSION,
a Municipal Corporation,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND ARGUMENT IN SUPPORT THEREOF.

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CHICAGO LAND CLEARANCE COMMISSION,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND ARGUMENT IN SUPPORT THEREOF.

TO THE HONORABLE FRED M. VINSON, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Inez White, *et al.*, petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Illinois entered in the above entitled cause on the 24th day of January, 1952 and petition for re-hearing denied on March 17, 1952.

Opinion.

The opinion as rendered by the Supreme Court of the State of Illinois is set forth in this petition in words and figures as follows: "Petitioner's Appendix A."

JURISDICTION.

The judgment of the Supreme Court of Illinois, was entered on January 24, 1952. Petition for rehearing was denied on March 17, 1952. The jurisdiction of this Court is invoked under Title 28, U. S. C., Section 344, Subsections a and b.

This was an action by the CHICAGO LAND CLEARANCE COMMISSION, a Municipal Corporation, to condemn certain parcels of property in Chicago, the basis of the right to condemn is the "BLIGHTED AREAS REDEVELOPMENT ACT," approved July 2, 1947, and referred to as Chapter 67½; Illinois Revised Statute, 1947, Sections 63-91, inclusive, hereto attached as "Petitioner's Appendix B, *Infra* pp. 43-67."

The petition sets forth the purpose sought to be accomplished by the "BLIGHTED AREAS REDEVELOPMENT ACT" in Paragraph 2.

Paragraph 11, of said petition to condemn sets forth Section 11, of the "BLIGHTED AREAS REDEVELOPMENT ACT of 1947" which has to do with the power of the LAND CLEAR...CE COMMISSION as given by the Statute.

Paragraph 11, sets forth Section 13, of the "BLIGHTED AREAS REDEVELOPMENT ACT" which has to do with the power of the Commission to determine when an area is of a "slum and blighted quality" as defined by the

Act. In this section, no provision is made for notice to the owners that the "slum and blighted qualities" of their property is to be ascertained. No opportunity is given the owners to appear and present evidence, pro or con, as to the "slum and blighted qualities" of their property. This section also provides:

> "That no such determination shall be of any force or effect until such time as it has been approved by the State Housing Board, and the governing body of the municipality in which the area is situated."

Paragraph 12, of said complaint is based upon Section 14 of the "BLIGHTED AREAS REDEVELOPMENT ACT" to the effect that when a determination of the CHICAGO LAND CLEARANCE COMMISSION has been approved by the State Housing Board and the governing body of the municipality in which the area is situated, the Commission may then proceed to acquire the property by condemnation. No notice is required by the Statute, either when the Commission makes its determination concerning the "slum and blighted quality" of the property, nor is any notice given when the governing body of the municipality in which the property is located approves the determination, nor is any notice given or required by the Statute when the State Housing Board approves the determination by the Commission.

Paragraph 13, of said petition sets forth the date of the determination by the Commission; the date of the approval by the governing body of the City of Chicago, to-wit: the City Council, and the approval by the State Housing Board.

Paragraph 14, of said petition sets forth the purpose for which the property is sought, to-wit: use in accordance with the Redevelopment Plan, pursuant to the Provisions of the "BLIGHTED AREAS REDEVELOPMENT ACT, 1947, and to convey the real property for use in accordance with the Plan.

Paragraph 15, alleges that the acquisition of the property and the use of the property is a public work for a public purpose.

This petition is set forth, verbatim, in the transcript of the record, pages 2-16, inclusive.

To this petition to condemn, the respondents filed the following motions:

1. Motion to controvert (Trans. of Rec. 23-39).

Respondents contend that the Statute, commonly referred to as "BLIGHTED AREAS REDEVELOPMENT ACT" is unconstitutional in that it is repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, for the following grounds: (a) no notice and opportunity were given to the respondents before the CHICAGO LAND CLEARANCE made a determination that their property was of a "slum and blighted quality"; (b) the Act gives the CHICAGO LAND CLEARANCE COMMISSION, a Municipal Corporation, unlimited power to be exercised in accordance with its private whims and caprices; (c) takes private property without compensation; (d) permits the CHICAGO LAND CLEARANCE COMMISSION to acquire private property for private use by condemnation and to use, exchange and transfer said private property contra to the Constitution of the United States and of the State of Illinois.

Respondents filed a motion to dismiss (Trans. of Rec. 44-58), and assigns the following grounds:

1. Private property cannot be taken for private use.

2. The Circuit Court is without jurisdiction to entertain petition to take private property for private use.

3. Legislature of the State of Illinois does not have the power or authority to take private property for private use.

4. Where the record shows that private property is being taken for private use the Circuit Court is without power to entertain the petition.

5. Determination that the Area in question was a "slum and blighted" quality, violates due process of law (a) no notice was given; (b) no opportunity given respondents to be heard.

6. That the legal capacity of the CHICAGO LAND CLEARANCE COMMISSION to file a suit for condemnation was acquired by the determination of the Commission on December 8, 1948 (Trans. of Rec. 11).

7. Said determination affected the right, title and interest of the respondents-petitioners—gave the Chicago Land Clearance Commission the legal capacity to acquire the area by gift, purchase or condemnation without respondents-petitioners' consent.

8. Said determination affected the right, title and interest of the respondents-petitioners in that, before the determination by the CHICAGO LAND CLEARANCE COMMISSION, the property owners, to-wit: the respondents, had an immunity against condemnation by the Commission; after the determination by the Chicago Land Clearance Commission, the immunity was destroyed and the right to condemn was within the commission; by such determination the immunity, which was the property of the respondents, had been taken by the Commission without notice, without an opportunity to be heard, and without compensation in violation of due process of law, contra to Article 2, Section 2, of the Constitution of the State of Illinois, and the Fourteenth Amendment to the Constitution of the United States (Motion to dismiss—Trans. of Rec. 46-47).

MOTION AND OBJECTIONS TO JUDGE (Tr. of Rec. 35-41).

1. Respondents objected to the hearing of this cause by Judge Jacob Berkowitz, a city Judge of Mattoon, Coles County, Illinois, and all orders entered by said Judge are void since he is not a Circuit Judge of the State of Illinois.

2. All orders are void for the reason that Judge Jacob Berkowitz, city Judge of Mattoon, Coles County, Illinois, had not been assigned by the Supreme Court of the State of Illinois.

3. That by law, in the State of Illinois, circuit judges could not exchange with city judges.

4. That Judge Jacob Berkowitz, a city Judge of Mattoon, Coles County, Illinois, could not be requested by the Circuit Court of Cook County to sit as a Circuit Judge.

5. That, by law, Judge Jacob Berkowitz, a city judge could not be assigned by the Supreme Court or the Circuit Court of Cook County, to sit as a circuit judge in Cook County.

6. That the selection and the assignment of Judge Jacob Berkowitz as above set forth amount to the denial of due process of law and a violation of the Constitution of the State of Illinois, and the Fourteenth Amendment to the Constitution of the United States.

7. The court, as constituted with Judge Jacob Berkowitz, a city Judge of Mattoon, Coles County, Illinois, the clerk, a Circuit Court Clerk of Cook County, and the Sheriff of Cook County,—is a combination that cannot constitute a circuit court with authority and jurisdiction to try this cause.

MOTION AND DEMAND FOR JURY (Tr. of Rec. 22-23).

Respondent-petitioners requested a jury of twelve men in accordance with the Constitution of the State of Illinois, 1818, Article 8, Section 8, as well as the Constitution of the State of Illinois, 1848, Article 13, Section 8, and in accordance with the Schedule to the Constitution of the State of Illinois of 1870.

Respondents-petitioners objected to the taking of their property in violation of the Constitution of the State of Illinois, and of the United States.

That right of trial by jury is guaranteed to these respondents-petitioners by the Constitution of the State of Illinois and of the United States.

NOTICE AND OBJECTIONS TO PROCEEDING IN TRIAL COURT (Tr. of Rec. 67-69).

"Now come the defendants, by their attorney, Heber T. Dotson, and object to proceeding further in the trial of this cause, and for grounds therefor say:

"1. The defendants reaffirm and reassert their objections to this cause being heard by Judge Jacob Berkowitz, city Judge of Mattoon, Coles County, Illinois, which said objections were interposed by written motion in this cause on February 14, 1951, and were overruled by this Court on February 15, 1951.

"2. That an appeal has been perfected to the Supreme Court of the State of Illinois, in this cause; that Notice of Appeal was filed on March 28, 1951; that Affidavit of Service of Notice of Appeal was filed on the same date; that Praecipe for Trial Court Record was filed on April 2nd, 1951; that Affidavit of Service of Notice of Praecipe was filed on April 2nd, 1951; that said Appeal is still pending and undisposed of in the Supreme Court of the State of Illinois.

"3. That by virtue of said appeal, the jurisdiction to hear and determine this cause is vested in the Supreme Court of the State of Illinois, having been trans-

ferred by the perfected appeal in accordance with the Statutes in such case made and provided.

"4. It is generally true that the filing of a Notice of Appeal, in due time, causes the jurisdiction of the reviewing court to attach immediately, and deprives the trial court of further jurisdiction. *Chicago Housing Authority* v. *Frank,* 335 Ill. App. 456, 82 N. E. 2d 205, at pages 206 and 207.

"5. Where an appeal is perfected the jurisdiction and control of the court below ceases and the appeal becomes a stay to all proceedings to force the execution of the judgment or decree. *Merrifield* v. *The Western Piano and Organ Company, et al.,* 238 Ill. 528, 87 N. E. 379, at 381.

"6. The appeal to the Circuit Court stayed all proceedings of the Probate Court—*Healea* v. *Verne,* 343 Ill. 325, 175 N. E. 562, at 564.

"Upon these grounds, the defendants object to proceeding any further in this cause before the trial Court, and because of said objections decline to jeopardize their appeal which is now perfected by refusing to take any part whatsoever in the hearing of this cause before the trial Court.

"Inez White, *et al., defendants*
By Heber T. Dotson,
Attorney for defendants.

"Heber T. Dotson, hereby certifies that he is the attorney of record in the above entitled cause, and that this motion is not filed for the purposes of delay, but in his opinion is well founded in law."

"Hebert T. Dotson."

Objections to Cause being heard by City Judge of Mattoon, Coles County, Illinois (Tr. of Rec. 35-41).

Objections to Proceeding to Trial where Appeal has been Perfected (Tr. of Rec. 67-69).

The following facts are admitted by the Record:

Motion to Admit Facts (Tr. of Rec. 30-32).

Response of Petitioner to Notice to Admit (Tr. of Rec. 32-34).

•At page 34, of Transcript of Record, the petitioner makes this admission:

"Under the statute the question of notice is immaterial."

•Petitioner makes this admission in paragraph 15, on page 34:

"Whether or not notice was given would be immaterial under the statute."

Motion—Interrogatories—Answer to Interrogatories (Tr. of Rec. 16-21).

•All questions regarding Notice, as this record will show, were not answered.

The Agreement with the NYLIC (Tr. of Rec. 51-58).

•At paragraph 23 on page 56 of the Transcript of Record, shows that the Redevelopment Project No. 1, is a private project, and that the NYLIC does have exclusive control.

Paragraph 1-A, page 52—that upon execution of this agreement, the Commission shall proceed to acquire the property of the defendants by virtue of the Blighted Areas Redevelopment Act of 1947.

•Paragraph 6, (Tr. of Rec. 53) provides that the Commission will convey to the NYLIC all of the area which the Commission acquires by condemnation.

•Sub-section C (Tr. of Rec. 53), provides that the Commission will convey to the NYLIC, etc.

Upon these Motions the following orders were entered:

1. Order objecting to Judge (Tr. of Rec. 43-44) objections denied.

2. Order on Motion to Controvert (Tr. of Rec. 59-64). Objections raised by Motion to Controvert, overruled and denied.

3. Order on Motion to dismiss (Tr. of Rec. 64-66). Motion to Dismiss is denied and overruled.

4. Order on Motion and Demand for Jury Trial (Tr. of Rec.) overruled and denied.

5. Order overruling objections to proceeding with trial in Trial Court while cause is pending in the Supreme Court of Illinois (Tr. of Rec. 68-69) overruled.

Upon the overruling of the Motions above set forth, by the Trial Court, the petitioners appealed the Cause to the Supreme Court of Illinois, and there reasserted its objections to the orders by the Trial Court in this cause, and argued the same before the Supreme Court, and in its brief the following points were argued:

I. Motion and objections interposed against Judge Jacob Berkowitz, City Judge of Mattoon, Coles County, Illinois, should and ought to have been sustained.

II. The Court as it is now composed is not a Circuit Court; (a) what constitutes a court? The Judge has no power to make judgments and judicial records. Those things can only be done as a court; (b) the orders of a judge not properly assigned to a court are null and void; (c) the placita shows that the court is not properly organized.

III. The motion and demand for a jury trial should and ought to have been sustained.

IV. The motion of the petitioners objecting to the trial court proceeding further in said cause should and ought to have been sustained.

V. The Statute complained of, violates Article 2, of the Constitution of Illinois, 1870; that sections 18 and 19, of the Statute in question, violates the Illinois Constitution, in that it permits the taking of private property for private use.

VI. The Act is unconstitutional, in that it does not set forth any standards or definitions as what is dilapidation, etc.; (a) the Chicago Land Clearance Commission is given arbitrary power to determine what is a "slum and blighted" area.

VII. The motions to controvert and to dismiss should have been sustained by the Trial Court; (a) the Statute gives to the Chicago Land Clearance Commission power to make a determination regarding the petitioners' property without notice and without an opportunity to be heard, contra to the petitioners' rights under the "due process law" clause of the Fourteenth Amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

VIII. That the Statute under consideration does not provide for a uniform law applicable to all buildings throughout the city but is subject to the arbitrary opinion of the Chicago Land Clearance Commission regarding what is dilapidation, obsolescence, over-crowded, faulty arrangements, etc.; (a) "BLIGHTED AREAS REDEVELOPMENT ACT, 1947," Section 65-j, violates Section 14, Article 2, of the Constitution of the State of Illinois, 1870.

IX. The Statute denies the petitioners in question, the equal protection of the law; (a) the equal protection clause applies to administrative action; (b) the statute deprives the petitioners of life, liberty and the pursuit of happiness without due process of law; (c) arbitrary and malicious action cannot constitute due process; (d) the statute abridges the privilege and immunities of the citizens of the United States.

QUESTIONS PRESENTED.

1. Was the Circuit Court of Cook County legally organized?

2. Does the "BLIGHTED AREAS REDEVELOPMENT ACT" violate the due process clause of the Fourteenth Amendment to the Constitution of the United States?

3. Does the "BLIGHTED AREAS REDEVELOPMENT ACT" violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

4. Did the Circuit Court as organized violate the due process clause of the 14th Amendment to the Constitution of the United States?

5. Did the denial to the respondents of a right of trial by jury as to the issues of fact as raised by the Motion to controvert amount to a violation of a right of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

6. Does the taking of private property for private use violate actual justice as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

7. Did the action of the Trial Court in proceeding, over the objections of the respondents, with trial of 30 parcels of real estate, to ascertain the amount of compensation, between the date of April 4, 1951 and April 13, 1951, after an appeal had been perfected in accordance with the Statutes in such case made and provided, violate the due process of law clause as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

8. Does the determination of the CHICAGO LAND CLEARANCE COMMISSION of December 8, 1948, which

makes the property of petitioners "Slum and Blighted" destroy an immunity on behalf of the property owners against condemnation by the CHICAGO LAND CLEARANCE COMMISSION, a Municipal Corporation, which immunity is protected by the 14th Amendment of the Constitution of the United States of America?

9. Does the failure of the statute to provide notice, opportunity to be heard concerning the "Slum and Blighted" quality of petitioners property, before determination is made as to its "Slum and Blighted" quality violate due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

10. Does the failure of the statute to provide standards as to what degree of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use by layout or any combination of these factors, which are detrimental to the public safety, health, or moral welfare, give to the CHICAGO LAND CLEARANCE COMMISSION the arbitrary power of determining these qualities without rule or limitation by which such determination shall be reached violate due process of law as required by the Constitution of the United States of America?

11. May the legislature delegate to a Commission the power to arbitrarily determine the "Slum and Blighted" quality, as above defined, of petitioners' property without giving to the Commission the arbitrary discretion which opens the way for unjust discrimination and violate the equal protection clause of the Constitution of the United States of America?

All of the above points and errors were argued before the Supreme Court of the State of Illinois, and even though not ruled upon, categorically, by the Supreme Court in its

opinion, were presented to the Supreme Court by all the precedure which the petitioners could avail themselves of. After the opinion of the Supreme Court of Illinois, on these issues which opinion is set forth in Appendix A, the petitioners presented their petition for a rehearing, which petition for rehearing urges the same objections (Trans. of Rec. pp. 101-116), and that said petition for rehearing was denied on March 17, 1952.

SPECIFICATIONS.

Specification of Errors To Be Urged:

1. The objections to Judge Jacob Berkowitz, city Judge of Mattoon, Coles County, Illinois, should have been sustained.

2. The Court as composed in this record is not a Circuit Court as created by the Constitution of the State of Illinois.

3. The motion and demand for jury trial should and ought to have been sustained.

4. The objections to proceeding in the cause after a perfected appeal to the Supreme Court of Illinois, should and ought to have been sustained.

5. The BLIGHTED AREAS REDEVELOPMENT ACT is unconstitutional because it gives power to a Commission which is arbitrary and capricious, in that it permits unequal application and discrimination between people of like circumstances.

6. The statute denies the petitioners in question, the rights guaranteed to the petitioners under the Fourteenth Amendment to the Constitution of the United States; (a) The equal protection clause as applied to administrative action; (b) the statute deprives the petitioners of life,

liberty and the pursuit of happiness without due process of law; (c) arbitrary and malicious action cannot constitute due process of law; (d) the statute abridges the privilege and immunities of the citizens of the United States, (e) takes private property for private use.

7. The Supreme Court of Illinois, erred in affirming the order of the trial court in its opinion.

THE REASONS FOR GRANTING WRIT.

I.

The objections to Judge Jacob Berkowitz, city judge of Mattoon, Coles County, Illinois should have been sustained.

These objections to Judge Jacob Berkowitz, City Judge of Mattoon, Coles County, Illinois should have been sustained since the Rules of the Circuit Court of Cook County (Appen. C., p. 70) provide the manner in which the Circuit Court is to be organized, and based upon these Rules, we fail to see how Judge Jacob Berkowitz, a city judge can be assigned to hear causes in the Circuit Court of Cook County, when, by law, he is a duly elected and qualified city judge of Mattoon, Coles County, Illinois.

It is admitted by the record that Judge Jacob Berkowitz is not a circuit or superior court judge of the judicial circuit of Cook County. This being true, he was not a member of the judicial circuit of Cook County on the date the purported assignment was made by the Executive committee of the Circuit Court of Cook County.

The assignment is void for the reason that the executive committee of the Circuit Court of Cook County, did not have the authority or power to transfer a cause of action to be tried by a judge who was not a member of the circuit or superior court of Cook County, in accordance with the Illinois Revised Statutes, Chap. 37, Sec. 7230, of the Ill. Rev. Stats. of 1949 (Appen. C., p. 68). By these statutes, the Supreme Court of Illinois could not assign a city judge to try a cause in the Circuit Court. This being true, we fail to see upon what legal basis the executive commit-

tee of the Circuit Court of Cook County, could assign a judge who was not a circuit court judge to hear causes in the Circuit Court, aforesaid. Such an act would be against the positive law of the State of Illinois, if the executive committee of the Circuit Court of Cook County is permitted to assign a city judge of another judicial district to preside over a bench of the Circuit Court of Cook County, and there is nothing to prevent the said executive committee of the Circuit Court of Cook County, from calling justices of the peace to preside over the highest constitutional court in the State of Illinois. This type of action, if sanctioned is, at the most, violation of the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

In accordance with Chapter 37, Section 7231, Illinois Revised Statute, 1949, it is provided that when there is an assignment by the Supreme Court, the judge so assigned is furnished with a certified copy of the order of assignment, which is made by either the Supreme Court as a whole, or by a judge of the Supreme Court in vacation. There is no such order in the case at bar. There is nothing in the record to indicate that Judge Jacob Berkowitz has been assigned as Judge of the Circuit Court of Cook County, except an order of the executive committee of the Circuit Court of Cook County, and there is no basis, in law, for the making of such an assignment by the executive committee.

In accordance with Chapter 37, Sec. 72.29, Ill. Rev. Stats. 1949, there can be an exchange by a circuit court judge only with another circuit court judge or the superior court of Cook County. This being true, the executive committee of the Circuit Court of Cook County, was and is without power to legally assign a city judge to hear a cause in a branch of the Circuit Court of Cook County.

By the Constitution of the State of Illinois, 1870, Article 6, Section 17, no person is eligible to the office of judge of the circuit court or the superior court of Illinois, unless he shall have resided in the circuit five years before his election. By this constitutional prohibition, Judge Jacob Berkowitz could not be elected to the Circuit Court of Cook County, since he does not reside in this Circuit. As was said in *State ex rel. Hovey* v. *Noble,* 118 Ind. 350, 21 N. W. 224, at page 251, that the people have a right to the courts as established under and by constitution, and this constitutional right cannot be altered or changed by the legislature. It would seem that if the legislature cannot alter or change the Rules, the executive committee of the Circuit Court of Cook County, is without power to so do, and no part of the judicial duties of the circuit court judge can be assigned to a city judge. Nor can the executive committee of the Circuit Court of Cook County, legally assign to a city judge, duties, which by law, are imposed upon a circuit court judge, since the judicial power of this state is distributed by the Constitution of the State of Illinois, and is beyond the control of the legislature or the Rules of the Executive committee of the Circuit Court of Cook County. For the Circuit Court of Cook County, and State of Illinois is a constitutional court, and being a constitutional court, its powers cannot be changed and distributed to city judges of divers cities by the legislature or the executive committee of the Circuit Court of Cook County. In accordance with the language of the Court in *People* v. *Maynard,* 14 Ill. 419, at page 421, *State ex rel. Hovey* v. *Noble,* 118 Ind. 350, 21 N. E. 224, at page 251, to the effect that the legislature can neither vest judicial power elsewhere, nor divide the judicial office designated by constitution. This being true, the legislature cannot make a city court and the judge of a

city court equal to a constitutional court such as the Circuit Court.

By the Constitution of Illinois, Circuit Court judges are elected by popular vote, except to fill a vacancy, not to exceed one year, which shall be filled by appointment of the Governor, and by law, in Illinois, there is no other way, legally, to fill a vacancy on the circuit court bench. *Hoagland* v. *Creed, et al.*, 81 Ill. 506, at page 507.

Upon these reasons, it is crystal clear that the Circuit Court of Cook County, as organized and established by this record, was such as did not give to Judge Jacob Berkowitz, the power to act as a Circuit Court Judge of Cook County, and all of the orders entered herein, violated the general laws of the land and are destructive of the due process of law, and equal protection of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and Article 2, Section 2, of the Illinois Constitution, 1870.

II.

The court as composed in this record is not a circuit court as created by the Constitution of the State of Illinois.

Dunham v. *Tilman*, 19 Mich. Rep. 688, at 694.

From the analysis of this opinion just above referred to, it is clear that Judge Jacob Berkowitz, a city judge of Mattoon, Coles County, Illinois, is not a circuit judge. The city judge of Mattoon, Coles County, Illinois, is the judge of a city court, created by the legislature of the State of Illinois, and within the limitations expressed in the Constitution of the State of Illinois. Being a city judge, Judge Jacob Berkowitz cannot perform those duties, which by

the Constitution of the laws of the State of Illinois, are chargeable only to a circuit court judge, presiding over a circuit court.

The legislature has no control over the general powers of the circuit court, which is a constitutional court created by the Constitution itself. Whereas, the city court and the city judge which are creatures and creations of the legislature are still city courts, and belong to that general classification as may be created by law for cities and incorporated towns. These courts are inferior courts and are not courts of general jurisdiction in the sense in which the term is applied to the Circuit Court by the Constitution.

Todd v. *U. S.*, 158 U. S. 2781, 15 Sup. Ct. Rep. 889, at 891.

Here, this court defines a judge as a public officer, and by virtue of his office is clothed with judicial authority.

In the case at bar, Judge Jacob Berkowitz is a city judge, duly elected and qualified as such and has the authority and power to exercise judicial authority within the confines of the city of Mattoon, Coles County, Illinois. But there is no legal procedure by which Judge Jacob Berkowitz, a city judge of Mattoon, Coles County, Illinois, may be assigned, appointed or called in, in exchange with one of the circuit judges of the judicial circuit of Cook County, Illinois. So, by law, he is not a proper officer to exercise judicial functions of the Circuit Court in the judicial circuit of Cook County and therefore, he is not a public officer in the exercise of judicial power at a time and place, appointed by law.

To permit Judge Jacob Berkowitz to exercise this judicial power is a flagrant violation of due process of law as guaranteed by the Fourteenth Amendment of the Con-

stitution of the United States, and Article 2, Section 2, of the Constitution of Illinois, 1870.

A court cannot be established until it has a judge, and a judge is a public officer, legally chosen for the public administration of the law, at the time and place described by law.

People ex rel. Herndon v. *Opel,* 188 Ill. 194, 58 N. E. 996, at 999:

Here, a judge not assigned to a court attempts to perform the functions of that court. The court states he acts without authority.

Patchen v. *Patchen,* 364 Ill. 178, 4 N. E. (2nd) 94, at 95.

The judge has no power to make judgments or judicial records outside of the court in which he officiates. He speaks and acts for the court for which he is an accredited agent. In this case, Judge Jacob Berkowitz being a city judge had no judicial power outside of the city court of Mattoon, Coles County, Illinois, and all of his acts and doings in the case at bar, are null and void, and the affirmation of said null and void acts by the Supreme Court of Illinois, does not validify same.

U. S. Life Ins. Co. v. *Shattuck,* 57 Ill. App. 382, at 384-385, to the same effect, states, a judge has no judicial power outside of the court in which he officiates in accordance with the law which creates a judge and the court.

Schlesinger v. *Allen,* 69 Ill. App. 138, at page 140-141.

Here the court states, the orders of a judge not properly assigned to a court are null and void.

In the case at bar, Judge Jacob Berkowitz, a city judge, was not assigned and could not be assigned by a Circuit Court of Illinois, and all of his acts are null and void.

Healy v. *Mobile and Ohio Railroad Company,* 161 Ill. App. 139, at 141. All orders made by a judge without legal

assignment to a court are null and void, and of no effect, as stated in *People ex rel. Chicago Bar Association* v. *Feinberg,* Circuit Court Judge, 348 Ill. 549, 181 N. E. 437, at 440.

The placita in this case shows on its face that the court was not properly organized and was not a court by which a lawful judgment could be rendered. *Rich* v. *City of Chicago,* 59 Ill. 286; *Planing Mill Co.* v. *City of Chicago,* 56 Ill. 304.

In *Dunn* v. *State,* 2 Ark. 229-252, the court gives a succinct and logical definition of a court:

> "The common law defines a court to be a 'place where justice judicially is administered,' and, therefore, to constitute a court there must be a place appointed by law for the administration of justice, and some person authorized by law to administer justice at that place, must be there for that purpose, when, but not otherwise, there is a court, and the judicial power of the state may there be exercised by the judge or person authorized by law to hold it."

From this definition, it is clear that the Circuit Court in the case at bar was not a circuit court. Hence the judgment entered by the court as presided over by Judge Jacob Berkowitz, were null and void. *Dunn* v. *State,* 2 Ark. 229-253.

When we look to the law in the case at bar and there find that the court was presided over by a city judge of a city court of Mattoon, Coles County, Illinois; that the place of the court was the Circuit Court of Cook County, we come to the inescapable conclusion that the judge who presided over the court was not a judge duly elected and designated as the judge of the Circuit Court, but was, in fact, a city judge, duly elected and qualified to hold court in the City Court of Mattoon, Coles County, Illinois and not within the judicial circuit of Cook County, and by law, was not vested with judicial powers. Therefore, all judgments and

orders which affected the rights of the petitioners herein, are violations of due process and the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and Article 2, Section 2, of the Constitution of the State of Illinois, and should not receive the sanctions of this Court.

III.

The motion and demand for jury trial should and ought to have been sustained.

By a casual inspection, it can be seen that the identical sections, to-wit: Article 8, Section 8, of the Constitution of Illinois, 1818, Article 13, Section 8, of the Constitution of Illinois, 1848, secured to the petitioners their property, in that the property cannot be taken except by a judgment of his peers. The Constitution of Illinois, 1870, Article 2, Sections 2 and 13, no person shall be deprived of life, liberty or property without due process of law.

Section 2, Article 2, of the Constitution of Illinois, 1870, left out "by judgment of its peers" or "law of the land," and inserted "due process of law." But the courts of Illinois have interpreted "law of the land" or "judgment of its peers" as equivalent to "due process of law."

Section 13, of Article 2, of the Constitution of Illinois, 1870, impliedly prohibits the taking of private property for private use.

In *Newland* v. *Marsh*, 19 Ill. 376, at page 382, the court construes that "by judgment of its peers" means a trial by jury. In *George* v. *People*, 167 Ill. 447, here, the court interpreted Article 8, Section 8 of the Constitution of Illinois, 1818, and Article 8, Section 13 of the Constitution

of Illinois, 1848, and Article 2, Sections 2 and 3, of the Constitution of Illinois, 1870, to mean that the right to trial by jury was the same under one as under the other.

In *Turnes* v. *Brunchle*, 249 Ill. 384, 94 N. W. 495, at page 497, the court hands down the rule that the right of trial by jury as heretofore enjoyed shall remain inviolate in all cases where such right existed at the time the Constitution was adopted.

Under the principles enunciated in this case, a party is entitled as a matter of right to a jury according to the course of the common law. And whether the right of a jury trial exists in a given case, depends upon the nature of the controversy rather than the form of action.

The conditions necessary to make a property a "slum and blighted quality" are set forth in Section 3, sub-section j of the "BLIGHTED AREAS REDEVELOPMENT ACT," which description would amount to a "nuisance" as defined by common law. This being true the section charges the property in the area with being a nuisance, and by the common law, the owners of the property would be entitled to a jury trial to determine whether or not this determination was true, and having the right by common law, the same was preserved by the Constitutions of Illinois, of 1818, 1848 and 1870. To deny to the petitioners the exercise of this common law right, which is protected and guaranteed by both the Constitutions of Illinois, and the Constitution of the United States of America, would amount to a violation of "due process of law," and as a violation of Article 2, Section 2, of the Constitution of the State of Illinois, and of Article 8, Section 8, of the Constitution of Illinois, Article 13, Section 8, of the Constitution of Illinois, 1848, and of the Constitution of the United States of America, the Fourteenth Amendment.

IV.

The objections to proceeding in the case after a perfected appeal to the Supreme Court of Illinois, should and ought to have been sustained.

The jurisdiction to proceed in this cause had been transferred to the Supreme Court of the State of Illinois, by the following facts: notice of appeal and proof of service of notice of appeal were filed March 28, 1951; praecipe for trial court record, proof of service of notice of praecipe were filed April 2nd, 1951. This appeal was still pending and undisposed of in the Supreme Court of Illinois, on the date the motion and objections to proceeding in the trial court were presented and overruled. (Trans. of Rec. 67-69.)

The following judgments as shown in transcript of record 69, 72 and 73, were entered after the perfection of the appeal: On April 10, 1951, notice was served on all parties of interest that the petitioners would appear on the 13th day of April, 1951, to apply for a supersedeas according to the Statute in such case made and provided, thereby making the notice of appeal of March 28, 1951, a supersedeas, and that on April 18th, 1951, an order was entered making the notice of appeal filed March 28, 1951, a supersedeas as to all parcels not yet tried, but excepting from the supersedeas all parcels tried as compensation between the dates of April 4, 1951, to and including April 13, 1951, which parcels and judgments as to value are set forth in transcript of record, 69, 72 and 73.

The order granting the supersedeas is found in transcript of record, 76-82.

These acts were perpetrated by the trial court and approved by an opinion of the Supreme Court of the State

of Illinois, despite the fact that in *Chicago Housing Authority* v. *Frank,* 335 Ill. App. 456, 82 N. E. (2d) 205, at page 206, that filing of a notice of appeal in due time causes jurisdiction of the reviewing court to attach and deprives the trial court of further jurisdiction.

In the case under consideration, the appeal was perfected and the trial court no longer had jurisdiction to try any issue in any case which was then pending before the Supreme Court. (*Joslyn* v. *Joslyn,* 386 Ill. 387, 54 N. E. (2d) 475, at pages 479-480, to the effect that if notice of appeal is served within twenty (20) days after the order complained of, if bond is given, filed and approved within thirty (30) days after notice of appeal, the notice of appeal shall operate as a supersedeas.

Petitioners herein, perfected their notice of appeal within thirty days; they asked for and obtained a supersedeas in the trial court within thirty (30) days; bond was fixed and approved in the trial court within thirty (30) days. These things having been done, the trial court was without jurisdiction to enter the judgments in this cause as set forth in Trans. of Rec. 69, 72 and 73.

Cowdery v. *Northwestern Trust Co.,* 321 Ill. App. 243, 53 N. E. (2d) 43, at pages 54-55, under the Practice Act, Section 74, an appeal constitutes a continuance of the proceedings in the court below, and is perfected by filing a notice of appeal in the lower court, Section 76. The appeal operates as a supersedeas when appellant gives and files a bond and bond is approved by the court. (Sec. 82, Ch. 110, Ill. Rev. Stats. 1949.)

In the opinion of the Supreme Court (Appen. A, p. 38), Mr. Justice Bristow says that the trials as to compensation were had in the court of Judge Jacob Berkowitz while the appeal was pending before the Supreme Court, awaiting

action of the Supreme Court on the motion to dismiss the appeal; that counsel for the defendants had notice of the trials but failed to participate. The action of the trial court, which was affirmed by the Supreme Court, forces upon the litigants the hazard of perfecting an appeal to the Supreme Court in accordance with the laws and statutes in such case made and provided, and at the same time permits the trial court to proceed to try the case which is on appeal in the Supreme Court.

This conduct was approved in the opinion of Mr. Justice Bristow in this succinct language:

> "It was apparent to Judge Berkowitz that appellants' attempt to appeal was premature and not taken from a final and appealable order. * * * and we are of the opinion that the trial court very properly refused to permit the unauthorized appeal to deter its progress and the disposition of all remaining questions and issues in the case."

The answer to this action on the part of the Supreme Court of Illinois, may be found in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 71 Sup. Ct. Rep. 644. Mr. Justice Frankfurter speaking at page 640.

The pronouncement of the Supreme Court of the State of Illinois made January 24, 1951, and the pronouncement of the Supreme Court of the United States in the case last cited, decided April 30, 1951, it is crystal clear that the right of the petitioners as guaranteed by the Constitution of the United States had been violated by the denial to the petitioners the due process and equal protection of the law, which means natural justice.

These petitioners by this record have been denied a fair and impartial trial according to the laws of the State of Illinois, and of the United States of America.

V.

The "Blighted Areas Redevelopment Act" is unconstitutional because it gives power to a commission which is arbitrary and capricious, in that it permits unequal application and discrimination between people of like circumstances.

The "BLIGHTED AREAS REDEVELOPMENT ACT" of 1947, Section 65, subsection j, describes the definition of a "slum". In this section of the Statute, the Commission is given the arbitrary power of determining what degree of dilapidation, what degree of obsolescence, what degree of faulty arrangement or design, what degree of lack of ventilation, what degree of light and sanitation, what degree of overcrowding, what degree of deleterious land use or layout, or what degree of any combination of these factors are detrimental to the public safety, health, morals or welfare.

By this act the Chicago Land Clearance Commission is given arbitrary power of determining these matters without rule or limitation by which such determination shall be reached. No measuring rod is given. This grant of power is an arbitrary discretion and opens the way for unjust discrimination. *People* v. *Scholem,* 294 Ill. 204, 128 N. E. 377, at 380. This grant of power gives to the Commission a discretion which is unreasonable. The Board is clothed with the right to grant privileges to some and deny it to others, similarly situated, while all are in the same general class. By this power, the Board is clothed with a discretion which is purely arbitrary and which may be exercised in the interest of a favored few, and is therefore unreasonable and invalid. *Cicero Lumber Co.* v. *The Town of Cicero,* 176 Ill. 9, 51 N. E. 758, at 764.

The power given by this section of the Statute to the Commission is arbitrary and subversive of the liberty of the petitioners and destructive of the rights of the petitioners. It is an unreasonable grant of power given without restraint, and by virtue of these attributes, is invalid. *City of Chicago* v. *Trotter*, 136 Ill. 430, 26 N. E. 350, at 360.

This Section gives to the Board the power to confer privileges upon one property owner to keep his property and deny the same privilege to another property, similarly situated, and there is nothing in the Act to regulate the Commission in doing so, and is not governed in the exercise of this discretion by any fixed rules or regulations other than the arbitrary and capricious judgment of the Chicago Land Clearance Commission. *Noel* v. *People*, 187 Ill. 587, 58 N. E. 616, at 618.

The definitions set forth in subsection "j" are so general, and so vague and indefinite as to make it impossible for one to ascertain from the reading of the Statute what is meant by "slum and blighted area", and because of this vagueness, indefinite and uncertainty the Act is invalid. *Chicago Land Agencies* v. *Palmer*, 364 Ill. 13, 2 N. E. (2d) 910, at 912, and to the same effect, *People* v. *Hurley*, 402 Ill. 562, 85 N. E. (2d) 26 at 28 and 29.

VI.

The statute denies the petitioners in question, the rights guaranteed to the petitioners under the Fourteenth Amendment to the Constitution of the United States: (a), (b), (c), (d) and (e).

(a)

The equal protection clause as applied to administrative action.

Like other pronouncements of Section 1, of the Fourteenth Amendment, the equal protection clause apply to the action by the executive and administrative officers of the State as well as to the legislative action. This was recognized in *Truax* v. *Corrigan,* 257 U. S. 312; *Yick Wo* v. *Hopkins,* 118 U. S. 356, 6 Sup. Ct. Rep. 1064.

(b)

The statute deprives the petitioners of life, liberty and the pursuit of happiness without due process of law.

"Due process" must be found in the State Statute and cannot be departed from without violating the Constitution of the United States. This Statute does not provide for notice to the person whose property rights are being determined, nor does it afford the property owner an opportunity to appear and offer whatever defense he has against this action. By failure to provide notice and opportunity to be heard, the Statute is invalid. *Del Castillo* v. *McConnico,* 168 U. S. 674, 18 Sup. Ct. Rep. 229.

(c)

Arbitrary and malicious action cannot constitute due process of law.

Hurtado v. *California,* 110 U. S. 516, 4 Sup. Ct. Rep. 111, at 121, to the effect that "due process of law" means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which governs society and thus excludes as "due process of law" acts of confiscation, and acts directly transferring one man's estate to another. These acts are acts which are perpetrated by the Statute under consideration, and have never been sanctioned by this Court. In order for said laws to be valid, the law must provide the method of contesting the determination, with notice to the person or such proceedings in regards to his property. Without these conditions in the determination which affects an individual or his property, is without "due process of law". *Lent* v. *Tillson,* 140 U. S. 316, 11 Sup. Ct. Rep. 825, at 826.

"Due process" does not require a particular form of notice, but only that there should be a regular course of proceeding in which notice is given of the claim asserted and an opportunity afforded against it. The essential requisites of "due process", and an opportunity to defend. *Simon* v. *Croft,* 182 U. S. 427, 21 Sup. Ct. 836, at 840.

In order for the law to comply with "due process", the Statute itself must provide for a notice, not as a matter of grace or favor, but as a matter of right. *Coe* v. *Armour Fertilizer Works,* 237 U. S. 413, 35 Sup. Ct. Rep. 625, at 629; *Central Georgia R. R. Co.* v. *Wright,* 207 U. S. 127, 28 Sup. Ct. Rep. 47, at 51.

(d)

The Statute abridges the privilege and immunities of the citizens of the United States.

The Statute in question, does not provide for the privileges and immunities of the citizens of the United States, and the determination under the Statute deprives the petitioners, who are citizens of the United States, of their property without "due process of law", and thereby denies to the petitioners the equal protection of law. *Butcher's Union, etc., Co.* v. *Crescent City, etc.*, 111 U. S. 746, 4 Sup. Ct. Rep. 652, at 657-658.

(e)

Takes private property for private use.

The Legislature of the State of Illinois has no power under the Constitution of the State of Illinois, to take private property for private use. This type of act is prohibited by both the Constitution of the United States and of the State of Illinois, and the Supreme Court of the State of Illinois, announced this doctrine in *Nesbitt* v. *Trumbo, et al.*, 39 Ill. 110, at 114 and *Chronic* v. *Pugh, et al.*, 136 Ill. 539, 27 N. E. 415, at 417; *The Town of Kingston* v. *Anderson*, 300 Ill. 577, 133 N. E. 347, at 348 and 349; *People ex rel. Touhy, State's Attorney* v. *City of Chicago, et al.*, 294 Ill. 477, 68 N. E. (2d) 761, at 764 and 766.

VII.

The Supreme Court of Illinois erred in affirming the order of the trial court in its opinion.

The first reason why the opinion of the Supreme Court of Illinois, should and ought to be set aside is based on the fact that the Circuit Court of Cook County as organized was not a circuit court, and had no jurisdiction to render the opinion which was affirmed by the Supreme Court of the State of Illinois, and affirming an opinion which was null and void for want of jurisdiction is, in itself, a nullity.

The second reason why the opinion of the Supreme Court of the State of Illinois, should and ought to be reversed and set aside is that the opinion shows on its face that while an appeal was perfected in accordance with the Statute in such case made and provided, and a supersedeas granted by the trial court within 30 days as allowed by the Statute; that while this case was still pending in the Supreme Court of the State of Illinois for said Court to determine whether it had jurisdiction of the appeal, the trial court proceeded to trial in said cause then pending in the Supreme Court and entered judgments and orders as to compensation contra to all the then adjudicated cases of the Supreme Court of Illinois regarding the rule of law that where an action is pending and undisposed of on an appeal, the trial court from which the appeal is taken is without jurisdiction until said case is redocketed in the trial court.

These errors appear uncontradicted in the opinion of the Supreme Court, and are sufficient of themselves to vitiate and destroy due process of law as guaranteed by the Constitution of the United States and the State of Illinois.

The third reason why this opinion of the Supreme Court of the State of Illinois, should and ought to be set aside is that, on the face of the opinion of the trial court, in words and figures as follows:

> "• • • a motion to dismiss the appeal on the ground that it was prematurely brought was allowed by this court at the May Term (409 Ill. 290)."

It is significant to note that at the time this appeal was perfected to the Supreme Court of the State of Illinois, it was based upon such finality as would give the petitioners the right to appeal. The definition of which is set forth in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 71 Sup. Ct. Rep. 624, at page 640, in words and figures as follows:

> "'Finality' is not, however, a principle inflexibly applied. If the ultimate impact of the challenged action on the petitioner is sufficiently probable and not too distant, and if the procedure by which that ultimate action may be questioned is too onerous or hazardous, 'standing' is given to challenge the action at a preliminary stage." (Reaffirmed in the Supreme Court of the United States, Numbers 744 and 745, October Term, 1951, in *Youngstown Sheet & Tube Co., et al.*, Petitioners, v. *Charles Sawyer; Charles Sawyer*, Petitioner, v. *Youngstown Sheet & Tube Co., et al.*, Opinion of the Court delivered January 2, 1952 U. S. Supreme Court Bulletin, pages 1311-1443.)

The determination or challenge status which the petitioners sought continuously to question carries with it a penal sanction which by the Statute under consideration gives to the Chicago Land Clearance Commission by virtue of the Commission's determination, the right to take the petitioners' property, the right to take the property is complete after the determination, and the taking is the penalty which may or may not be inflicted by the Chicago Land Clearance Commission, but the immunity against the taking is lost by the determination, thereby causing in-

jury and damage to the petitioners and because of the determination by the Chicago Land Clearance Commission, that the property of the petitioners is a "slum and blighted quality", the value of the said property is lessened if not destroyed.

In this case, all of the attributes necessary to sustain an appeal are present, and the doctrine or rule of law enunciated in *Joint Anti-Fascist Committee* v. *McGrath*, 71 Sup. Ct. Rep. 624, at 644, should and ought to be controlling.

The constitutionality of the Act which was approved by the Supreme Court of Illinois is an error apparent upon the opinion of said Court.

We wish to say that the Act is invalid for the reason that no standards appear in the Statute; no drawn limitations appear; no sufficient circumscribing of the arbitrary and capricious power given to the Commission. Such unrestricted power was held to be invalid in *Kunz* v. *The People of the State of N. Y.*, 340 U. S. 290, 71 Sup. Ct. Rep. 312; *Saia* v. *The People of the State of N. Y.*, 334 U. S. 558, 68 Sup. Ct. Rep. 1148; *Niemotko* v. *The State of Maryland*, 71 Sup. Ct. 325, at page 327, and *Bustyne, App.* v. *Wilson, Commissioner of Education of the City of N. Y., et al.*, Opinion 522, Oct. Term, 1951, rendered May 26, 1952, Appeal from the Court of Appeals of the City of New York.

CONCLUSION.

For the foregoing reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX "A".

Docket No. 32140—Agenda 48—September, 1951.

Chicago Land Clearance Commission, Appellee v. Inez White, et al., Appellants.

Mr. Justice Bristow delivered the opinion of the court:

This case involves an appeal from the circuit court of Cook County wherein several judgments were entered fixing compensation for several tracts of land owned by different defendants.

The petitioner is the Chicago Land Clearance Commission which was acting pursuant to a statute known as the Blighted Areas Redevelopment Act of 1947. (Ill. Rev. Stat. 1949, chap. 67½, pars. 63-91.) Counsel appearing for appellants herein questioned the constitutionality of this act in a proceeding which resulted adversely to his claim in this court in the case entitled *People ex rel. Tuohy* v. *City of Chicago*, 399 Ill. 551.

The petitioner in the instant case determined that a certain territory lying on the south side of Chicago was a slum and blighted area that should be cleared and redeveloped as provided by the statute. To this end all procedural steps were taken during December, 1949, and 1950, wherein petitioners represented by several counsel filed in the circuit court of Cook County sixteen petitions to condemn certain tracts of real estate, there being several parcels contained in each petition. All of these cases were assigned to Judge D. J. Normoyle, who was the judge assigned to hear the condemnation calendar. From him changes of venue were sought and obtained by all defendants involved in this appeal. Following local rules, these cases then went to Judge Harry M. Fisher, who, failing to effectuate settlement on pretrial, consolidated the petitions

to condemn under the title of the first filed and sent them for disposition to Judge Jacob Berkowitz, a judge of the city court of Mattoon, holding a branch of the circuit court of Cook County at the request of and pursuant to the order of the executive committee of the judges of the circuit court of Cook County. All defendants then and here are represented by the same counsel. In each proceeding he filed the same motion to controvert petitioners' right to condemn.

There was a trial in the court of Judge Berkowitz on this motion which lasted fourteen days. The defendants were unsuccessful, and, after their motions to controvert were overruled, they each filed separate motions to dismiss. These motions likewise were overruled.

Before a hearing on the question of just compensation was had, defendants perfected an appeal to this court, and before a final judgment was entered as to any of the parcels involved herein, the petitioner, desiring an early disposition of the appeal, filed a short record and with it a motion to dismiss the appeal on the ground that it was prematurely brought.

This motion was allowed at the May Term of this court, 1951, in the case entitled *Chicago Land Clearance Com.* v. *White,* 409 Ill. 290.

During the pendency of the appeal, there were jury trials in the court of Judge Berkowitz to determine the compensation to be paid for certain parcels of real estate included in the foregoing appeal. Counsel for defendants had notice of but failed to participate in those trials, which took place on April 4, 9, 10, 11. On April 13 a motion for supersedeas was filed, in those cases where jury trials were had to ascertain fair compensation, which was allowed by Judge Berkowitz, awaiting the action of this court on the motion to dismiss the appeal. After the mandate of this court dismissing the appeal was filed, trials and judgments were

had as to all remaining parcels of property. The defendants are again in this court and with an incomplete record. There is only one petition to condemn and only one motion to controvert, and there being no report of proceedings we are not called upon to resolve any factual controversy.

The appellants have assailed the judgments entered in this cause in a brief containing 150 pages. The first one-third of the brief challenges the legality of all proceedings before Judge Jacob Berkowitz, contending he had no authority to hold court in Cook County and was not properly assigned to that court.

Appellants admit in their brief that Judge Berkowitz was assigned to preside in the circuit court of Cook County by an order signed by the executive committee of the circuit judges of Cook County. They have failed to cite and consider the appropriate statute controlling the situation under consideration (Ill. Rev. Stat. 1949, chap. 37, par. 338), which states:

"Section 6. Such judges may, with like privileges as the judges of circuit, superior and county courts, interchange with each other, and with the judges of circuit, superior, county and probate courts of Cook and other counties and may hold court for each other, and for judges of circuit, superior, county and probate courts of Cook and other counties, and perform each other's duties, and the duties of judges of circuit, superior, county and probate courts of Cook and other counties, when they find it necessary or convenient."

The above section was enacted in 1901 and amended in 1915 and 1927. The 1915 amendment inserted the phrase "Cook and other counties," and the 1927 amendment embraced the "Superior Court of Cook County." This court has had occasion to consider the applicability of that statute in the following cases: *American Car and Foundry Co.* v.

Hill, 226 Ill. 227; *People ex rel. Giese* v. *Dillon*, 266 Ill. 272; *Madden* v. *City of Chicago*, 283 Ill. 165. In the latter case, a question was raised with respect to the right of a city court judge sitting in the circuit court to sign a bill of exceptions. The court said, at page 171, "We will take judicial notice of the fact that E. M. Mangan is a judge of the city court of the city of Aurora. Under the statutes he is empowered to hold circuit court in any of the circuits in the State when properly requested to do so." To like effect is the holding in the case of *Cummings* v. *Smith*, 368 Ill. 94. We are not unmindful of the statute authorizing the Supreme Court to assign a judge from one circuit to another, nor are we unaware of its inapplicability to the present situation because that statute was not the source of authority for the assignment of Judge Berkowitz to preside in the circuit court of Cook County, Illinois.

The next major contention made by appellants is that they were entitled to a jury to pass upon their motion to controvert petitioner's right to condemn. With all deference to the ingenious constitutional arguments of counsel spread over 35 pages of their brief, we are of the opinion that this argument is without validity. This court has repeatedly and consistently held that the right of a petitioner to maintain a condemnation suit is a preliminary question to be determined by the court without a jury. (*Smith* v. *Chicago and Western Indiana Railroad Co.*, 105 Ill. 511; *O'Hare* v. *Chicago, Madison and Northern Railroad Co.*, 139 Ill. 151; *Sanitary District of Rockford* v. *Johnson*, 343 Ill. 11; *Department of Public Works and Buildings* v. *Lewis*, 344 Ill. 253; *St. Clair Housing Authority* v. *Quirin*, 379 Ill. 52; *Williamson County* v. *Brock*, 367 Ill. 159.) In the recent case of the *Board of Education* v. *City of Chicago*, 402 Ill. 291, will be found the following language: "The only issue to be tried by the jury is the amount of com-

pensation to be awarded." In all the other authorities heretofore cited will be found the language of similar import.

It is next contended by appellants that the trial court was without jurisdiction to proceed to determine the issue of just compensation during the period of time the defendants were prosecuting their ineffectual appeal. Although some uncertainty may have been caused by the 1949 amendment to the Eminent Domain Act, it was apparent to Judge Berkowitz that appellants' attempt to appeal was premature and not taken from a final and appealable order. The delay was entailed by a premature appeal. Appealing from interlocutory orders would necessarily postpone indefinitely the final determination of any case. It is particularly important that such measures of obstruction should be obviated in a condemnation proceeding where frequently the time element is an important factor. We are of the opinion that the trial court very properly refused to permit the unauthorized appeal to deter its progress in the disposition of all remaining questions and issues in the case.

Vigorous attack is made by appellants upon the constitutionality of the Blighted Areas Redevelopment Act of 1947. A complete answer to all their contentions on this subject may be found in the recent cases of *People ex rel. Tuohy* v. *City of Chicago*, 394 Ill. 477, and *Zurn* v. *City of Chicago*, 389 Ill. 114. In appellant's brief is found the false major premise that the present proceeding is for the sole purpose of acquiring property for the New York Life Insurance Company. Each petition herein seeks to acquire the property in the slum and blighted area so that the slum may be cleared. The New York Life Insurance Company does not appear in any of the petitions. Appellee admits, however, that it is a fact that the commission has entered into a contract for the sale to the New York Life Insurance

Company of a portion of the property in the area where the buildings have been removed. This contract was entered into pursuant to the provisions of the statute. The controlling motive, however, for the present condemnation is to clear from the area in question the moral and physical blight which slum and congestion has created. The subsequent development of the property by the New York Life Insurance Company does not mean that the taking is for a private purpose. Consequently, the many authorities cited in appellants' brief to the effect that private property cannot be condemned for private use are not applicable to the present situation. Quite appropriate is this statement appearing in the *Zurn* case, at page 129: "The redevelopment of slum and blight areas, * * * constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved."

We have carefully considered all other arguments advanced by appellants in their brief and find them to be without merit. We deem it needless to prolong this opinion with a detailed analysis of them. We are of the opinion that the judgment appealed from should be affirmed.

Judgment Affirmed.

APPENDIX "B".

STATUTES INVOLVED:

Blighted Areas Redevelopment Act of 1947.

Sec. 1. This Act shall be known and may be cited as the "Blighted Areas Redevelopment Act of 1947."

Sec. 2. It is hereby found and declared (a) that there exists in many urban communities within this State slum and Blighted areas, as defined herein; (b) that such areas contribute to the development and cause and increase in and spread of disease, crime, infant mortality and juvenile delinquency, and constitute a menace to the health, safety, morals, and welfare of the residents of the State; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities and constitute a drain upon the public revenue and continue to impair the efficient, economical and indispensable governmental functions of the municipalities embracing such areas, as well as of the State; and (c) that in order to promote and protect the health, safety, morals and welfare of the public it is necessary to provide for the eradication and elimination of slum and blighted areas and the construction of redevelopment projects thereon, and that the eradication and elimination of such areas and the construction of redevelopment projects financed by private capital, with limited financial assistance from government bodies, in the manner provided in this Act are hereby declared to be a public use essential to the public interest.

Sec. 3. The following terms, wherever used or referred to in this Act shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Commission" means a Land Clearance Commission created pursuant to this Act or heretofore created pursuant to "An Act to promote the improvement of housing," approved July 26, 1945.

(b) "Commission" or "Commissioners" shall mean a Commissioner or Commissioners of a Land Clearance Commission.

(c) "State Housing Board" or "Board" shall mean the State Housing Board created pursuant to "An Act in relation to housing," approved July 12, 1933, as amended.

(d) "Authority" or "Housing Authority" shall mean a housing authority organized in accordance with the provisions of "an Act in relation to housing authorities," approved March 19, 1934, as amended.

(e) "Municipality" shall mean a city, village or incorporated town.

(f) "Presiding officer" shall mean the presiding officers of the board of a county, or the mayor or president of a city, village or incorporated town, as the case may be, for which a Land Clearance Commission is created.

(g) The term "governing body" shall mean the council or the president and board of trustees of any city, village or incorporated town, as the case may be, and the county board of any county.

(h) "Area of operation" shall mean (1) in the case of a Land Clearance Commission created for a municipality, the area within the territorial boundaries of said municipality; and (2) in the case of a county shall include the areas within the territorial boundaries of all municipalities within such county, except the area of any municipality located therein in which there has been created a Land Clearance Commission. When a Land Clearance Commission is created for a municipality subsequent to

the creation of a County land clearance commission whose area of operation previously included such municipality, the area of operation of the County land clearance commission shall not thereafter include the territory of such municipality, but the County land clearance commission may continue any redevelopment project previously commenced in such municipality.

(i) "Real property" shall include lands, lands under water, structure, and any and all easements, franchises and incorporeal hereditaments and estates, and rights, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(j) "Slum and Blighted Area" means any of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive and land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health morals or welfare.

(k) "Match" and any other form of said word when used with reference to the matching of moneys means match on a dollar for dollar basis.

Sec. 4. The governing body of any municipality having more than 25,000 inhabitants, as determined by the last preceding Federal census, or of any county of this State may, by resolution determine that there is need for a Commission in such municipality or county to exercise the powers and authority prescribed by this Act. Upon adoption, such resolution shall be forwarded to the State Housing Board together with a Statement of reasons or findings supporting such resolution. The Board shall thereupon

issue a certificate to the presiding officer of such municipality or county for the creation of such Commission if it shall find that one or more slum or blighted areas exist in such municipality or county. In determining whether slum or blighted areas exist, the Board may take into consideration the degree of over-crowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, the age and condition of the buildings and the extent to which conditions exist in such buildings which endanger the life, health, safety, morals and welfare of the occupants thereof.

Sec. 5. As soon as possible after the issuance of a certificate by the State Housing Board the presiding officer of such municipality or county shall appoint, with the approval of the Board five commissioners with initial terms of one, two, three, four or five years. Upon the approval by the Board of such appointments, the Board shall cause a certificate of such appointments and of its approval thereof to be filed in the office in which deeds of property in the area of operation are recorded, and upon such filing the persons so appointed and approved shall be fully constituted as a Land Clearance Commission.

At the expiration of the term of each such commissioner, and of each succeeding commissioner, or the event of a vacancy, the presiding officer shall appoint a commissioner, subject to the approval of the Board as aforesaid, to hold office, in the case of a vacancy for the unexpired term, or in the case of expiration for a term of five years, or until his successor shall have been appointed and qualified. Each such appointment shall be effective upon the filing by the Board of a certificate of appointment and its approval thereof, as hereinbefore provided.

Every commissioner shall be a resident of the area of operation of the Commission. Any public officer shall be eligible to serve as a commissioner, and the acceptance of appointment as such shall not germinate nor impair his other public office, the provision of any statute to the contrary notwithstanding; but no member of the State Housing Board shall be eligible to serve as a Commissioner, nor shall more than two public officers be commissioners of the same Commission at one time.

Any Land Clearance Commission heretofore created pursuant to "An Act to promote the improvement of housing," approved July 26, 1945, shall be deemed lawfully and validly created under the terms of this Act, and shall have all the authority and exercise the same powers, and be subject to the same duties as herein prescribed for Land Clearance Commissions; and nothing herein contained shall affect or impair the validity of any act or proceeding done or performed by such Land Clearance Commission under the aforesaid Act of 1945.

Sec. 6. A Commission shall be designated as the Land Clearance Commission of the city, village, incorporated town or county for which it has been created.

Sec. 7. Whenever it shall appear to the State Housing Board that a commissioner is incompetent or guilty of neglect of duty or malfeasance, the Board shall require such commissioner to appear before it to show cause why he should not be removed from office. At least fifteen days' written notice of such a hearing shall be given to the commissioner whose conduct is in question and to all other members of the Commission. At the hearing the commissioner may be represented by counsel and may appear personally and present such pertinent evidence as he wishes or as the Board may request.

If after a hearing the Board determines that a commissioner has been incompetent or has been guilty of neglect of duty or malfeasance, it shall remove such commissioner from the Commission within seven days, and there shall thereupon be deemed to be a vacancy of such office.

Sec. 8. No commissioner or employee of a Commission shall acquire any interest direct or indirect in any redevelopment project, or in any property included or planned to be included in any redevelopment project, nor shall he have any interest direct or indirect in any contract or proposed contract in connection with any such project. If any commissioner or employee of any Commission owns or controls an interest direct or indirect in any property included in any redevelopment project, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Commission.

Sec. 9. As soon as possible after the creation of a Commission the commissioners shall organize for the transaction of business by choosing from among their number a chairman, a vice-chairman and a secretary and by adopting by-laws and rules and regulations suitable to the purpose of this Act. Three commissioners shall constitute a quorum for the transaction of the business thereof. The commission may appoint such professional, technical and clerical assistants as are necessary for the proper performance of its duties, provided the approval of both the State Housing Board and the presiding officer of the municipality or county which initiated the creation of such Commission is obtained both as to any such appointments and as to the amount of the salaries, fees or other compensation to be paid. Such salaries, fees, or other compensation when so approved, shall be paid out of the separate fund referred to in Section 21 hereof.

The concurring vote of three commissioners shall be required for the exercise of any of the powers granted by this Act.

Sec. 10. No commissioner shall receive compensation, whether in form of salary, per diem allowance or otherwise, for in connection with his services as such commissioner. Each commissioner, however, shall be entitled to reimbursement out of the separate fund referred to in Section 21 hereof, for any necessary expenditures in connection with the performance of his duties.

Sec. 11. A Commission shall be a municipal corporation and shall constitute a body both corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act. It may sue and be sued, have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, deeds and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this Act. In addition it shall have the following powers.

(a) To acquire slum and blighted areas as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan; and

(d) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers a Commission may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and to ascertain in which such area or areas redevelopment projects should be undertaken, and in connection with such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency of the municipality wholly or partially within its area of operation.

A Land Clearance Commission shall not be limited to one redevelopment project, but may have as many projects in process at any one time as it may deem necessary to accomplish the purposes of this Act.

A Commission shall have no power to build or operate housing on any real property acquired pursuant to this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith.

12. In making investigations herein authorized the Commission may hold public hearing. Any hearing may be conducted by the Commission or by a committee appointed by it, consisting of one or more members of the Commission, or by an employee or agent specially authorized by the Commission to conduct it. The Commission and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of wit-

nesses and the production of books and papers pertaining to such investigation.

In case of contumacy or refusal to obey a subpoena issued to any person, the Circuit or Superior Court of the county in which such person resides or has his principal place of business, upon application by the Commission, shall jurisdiction to issue to such person an order requiring such person to appear before the Commission or before any member, employee or agent thereof designated to conduct such hearing there to produce evidence, if so desired, or there to give testimony touching the matter under investigation and any failure to obey such order of the Court may be punished by said Court as a contempt thereof.

The officials of any city, village or town and the members of the zoning commission shall, when requested so to do by any member of the Commission, make available for inspection by the Commission or by any committee, employe or agent of the Commission any and all records and data which they may have pertaining to an area which is then being investigated.

Sec. 13. Whenever a Commission determines that a particular slum or blighted area, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date of which the determination was made shall be immediately set forth in the records of the Commission. Such determination by a Commission may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Land Clearance Commission. A Certified copy of such resolution shall be delivered to the State Housing Board

and to the governing body of the municipality in which the area is situated. The area of each such determination is herein referred to as a "redevelopment project." No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated.

Sec. 14. Upon approval of the determination as provided in the preceding Section, the Land Clearance Commission may proceed to acquire by gift, purchase or condemnation the fee simple title to all real property lying within the area included in the redevelopment project, including easements and reversionary interests in the streets, alleys and other public places lying within such area. If any such real property is subject to an easement the Commission, in its discretion, may acquire the fee simple title to such real property subject to such easement if it determines that such easement will not interfere with the condemnation of a redevelopment plan. If any such real property is already devoted to a public use it may nevertheless be acquired, provided that no property belonging to the United States of America, the State of Illinois or any municipality may be acquired without the consent of such governmental unit and that no property devoted to a public use belong to a corporation subject to the jurisdiction of the Illinois Commerce Commission may be acquired without the approval of the Illinois Commerce Commission. Each Land Clearance Commission is hereby vested with the power to exercise the right of eminent domain. Condemnation proceedings instituted by Land Clearance Commission shall be in all respect in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as heretofore or hereafter amended.

Sec. 15. When a Land Clearance Commission has acquired title to, and possession of, all or any part of the real property located within a redevelopment project pursuant to the provisions of this Act, it may let contracts for the demolition or removal of buildings standing thereon and for the removal of any debris resulting therefrom. The Commission shall advertise for sealed bids for the doing of such work. The advertisement shall describe by street number or other means of identification the location of the buildings which are to be demolished or removed and shall state the time when and place where sealed bids for the doing of the work may be delivered to the Commission. The advertisement shall be published once in a newspaper having general circulation in the municipality in which the real property is situated at least twenty (20) days prior to the date named therein when time for receiving bids will expire. A contract for the doing of the work shall be let to the lowest responsible bidder, but the Commission may reject any and all bids received and readvertise for bids. Any contract entered into by the Commission pursuant to this Section shall contain provisions requiring the contractor to give bond in an amount equal to one-third of his bid price, but in no event in excess of Twenty-Five Thousand Dollars ($25,000.00), conditioned for the faithful performance of the contract and requiring the contractor to furnish insurance of the character and amount to be determined by the Commission protecting the Commission and the municipality and their officers, agents and employees against any claims for personal injuries (including death) and property damage that may be asserted because of the doing of the work. The Commission may include in any advertisement and in the contract to be let pursuant thereto one or more buildings, or group of buildings, as the Commission in its sole discretion may determine.

Sec. 16. The Land Clearance Commission, if it sees fit so to do, may pave and improve streets in the area included in the redevelopment project, construct sidewalks and install or re-locate sewers, water pipes, and other similar facilities. The Commission shall advertise for sealed bids for the doing of the work referred to in this Section. The advertisement shall describe the nature of the work to be performed and shall state the time when and place where sealed bids for the doing of the work may be delivered to the Commission. The advertisement shall be published once in a newspaper having a general circulation in the municipality in which the redevelopment project is situated at least twenty (20) days prior to the date named therein when the time for receiving bids will expire. A contract for the doing of the work shall be let to the lowest responsible bidder, but the Commission may reject any and all bids received and re-advertise for bids. The contractor shall be required to enter into bond in an amount equal to one-third of the amount of his bid conditioned for the faithful performance of the contract. The sureties on any such bond and on any bond to be given pursuant to the provisions of Section 15 thereof shall be approved by the Chairman of the Land Clearance Commission.

Sec. 17. When the Commission has acquired title to, and possession of any or all real property in the area of a redevelopment project, the Commission (1) may convey to the Municipality in which the project is located (for street or alley purposes) and without any monetary consideration therefor, such parts thereof as are to be laid out into streets or alleys; (2) with the approval of the State Housing Board, may convey to that municipality or to any public body having jurisdiction over schools, parks or playgrounds in the area in which the project is situated such parts of such real property for use for parks, playgrounds,

schools and other public purposes as the Commission may determine, and as such public bodies may agree upon; and (3) with the approval of the State Housing Board, may grant easements for public utilities, sewers and other similar facilities, without consideration therefor.

Sec. 18. The Commission, with the approval of the State Housing Board and the governing body of the Municipality in which the redevelopment project is located, may sell and convey not to exceed fifteen per cent (15%) of all the real property which is to be used for residential purposes in the area or areas of a redevelopment project or projects to a Housing Authority created under an Act entitled "An Act in relation to housing authorities", approved March 19, 1934, as amended, having jurisdiction within the area of the redevelopment project or projects, to provide housing projects pursuant to said last mentioned Act; provided the State Housing Board determines that it is not practicable or feasible to otherwise relocate eligible persons residing in the area of the redevelopment project or projects in decent, safe and uncongested dwelling accommodations within their financial reach, unless such a housing project is undertaken by the Housing Authority, and provided further that first preference for occupancy in any such housing project developed by the Housing Authority on such real property shall be granted to eligible persons from the area included in the redevelopment project or projects that cannot otherwise be relocated in decent, safe and uncongested dwelling accommodations within their financial reach.

Any real property sold and conveyed to a Housing Authority pursuant to the provisions of this Section shall be sold at its use value (which may be less than its acquisition cost), which represents the value at which the Commission determines such land should be made available in

order that it may be redeveloped for the purposes specified in this Section.

Sec. 19. The Commission may at such times as it deems expedient transfer and sell the fee simple title or such lesser estate as the Commission may have acquired, to all or any part of the real property within the area of a redevelopment project not disposed of in accordance with Sections 17 and 18 hereof (1) to Neighborhood Redevelopment Corporation Law, "approved July 9, 1941, (2) Insurance Companies operating under Section 125 of the Illinois Insurance Code," approved June 29, 1937, as amended, or (3) to any individual association, or corporation, organized under the laws of this State or of any other State or country, which may legally make such investments in this State, including foreign and alien insurance companies, as defined in Section 2, of said "Illinois Insurance Code". No sale shall be consummated hereunder unless the purchaser presents a plan for the development or redevelopment of such property, which plan meets with the approval of the Commission, the State Housing Board and the governing body of the municipality in which the real property is situated and conforms in all respects with the zoning and building ordinances of such municipality. To assure that the real property so sold is used in accordance with the presented plan, the Commission shall inquire into and satisfy itself concerning the financial ability of the purchaser to complete the redevelopment in accordance with the presented plan and shall require the purchaser to execute in writing such undertakings as the Commission may deem necessary to obligate the purchaser: (1) to use the land for the purpose designated in the plan so presented, (2) to commence and complete the building of the improvements within the periods of time which the Commission fixes as reasonable, and (3) to comply with such other con-

ditions as are necessary to carry out the purposes of this Act. Any such area may be sold either as an entirety or in such parcels as the Commission shall deem expedient. It shall not be necessary that the title be acquired to all real property within the area of a redevelopment project before the sale of a part thereof may be made as provided herein. Any real property sold pursuant to the foregoing provisions of this Section shall be sold at its use value (which may be less than its acquisition cost), which represents the value at which the Commission determines such land should be made available in order that it may be developed or redeveloped for the purposes specified in the plan presented.

Any real property lying within the area of a redevelopment project which has not been sold by the Commission within five years after the Commission has acquired title to all the real property within the area of that redevelopment project, shall be forthwith sold by the Commission at public sale for cash to the highest bidder. Notice of such sale shall be published once in a newspaper having a general circulation in the municipality in which the real property is situated at least twenty (20) days prior to the date of such public sale, and shall contain a description of the real property to be sold.

Sec. 20. The sale of any real property by a Land Clearance Commission where required to be made for a monetary consideration except public sales as provided in the last paragraph of Section 19, shall be subject to the approval of the State Housing Board and the governing body of the municipality in which the real property is located.

All deeds of conveyances shall be executed in the name of the Land Clearance Commission by the Chairman and Secretary of the Commission and the seal of the Commis-

sion shall be attached thereto. Any deed of conveyance by the Commission may provide such restrictions as are required by the plan for redevelopment and the building and zoning ordinances, but no deed of conveyance either by the Commissions or any subsequent owner shall contain a covenant running with the land or other provision prohibiting occupancy of the premises by any person because of race, creed or color.

Sec. 21. Any Land Clearance Commission may apply to the State Housing Board for the grant of a sum from the amount appropriated for grants under this Act to aid and assist in carrying out redevelopment projects. Every application shall state therein the amount applied for and if made by a Land Clearance Commission whose area of operation includes more than one municipality shall state separately the amount to be expended in each municipality on behalf of which the application is made and each such separate amount shall be treated as a separate application. Every application shall have attached thereto a certified copy of a resolution of the governing body of the municipality within which the amount of such grant is to be expended that in the event the application is approved in whole or in part such municipality will endeavor to make available and pay to the Land Clearance Commission to be deposited by it in the fund hereinafter referred to an amount at least equal to the amount approved by the State Housing Board. No application shall be considered which does not comply with the foregoing requirements. The State Housing Board shall not approve any application for a grant within a period of one hundred twenty (120) days after the effective date of this Act. Upon the expiration of said one hundred twenty (120) days period, the Board shall consider all applications for grants presented to it within said period of time, the same as if all such

applications had been presented at the same time. The Board shall review all applications for grants and shall determine the actual needs of any applicant therefor. In determining such needs, it shall consider the prevalence of slum and blighted areas in the area of operation of the applicant, the number of unsafe, unsanitary and congested dwelling units in the areas of operation of the respective applicants for grants, and the extent and scope of the degenerative conditions described in Section 2 prevailing in any such area as a result of the existence therein of slum and blighted areas. The State Housing Board may deny any such application if it determines that no need therefor exists, or it may approve the application in whole or in part in accordance with its determination of need. If the appropriation made for this Act is insufficient to provide grants to all applicants therefor on the basis of their needs as determined by the Board, the Board may determine and select the areas of operation for which grants shall be made hereunder on the basis of the relative needs of the applicants for slum and blight eradication. No application shall be approved in whole or in part unless the Board is satisfied that the amount approved will be properly employed by the Land Clearance Commission in carrying out a redevelopment project or projects. Whenever the State Housing Board approves any application in whole or in part, it shall immediately allocate and set aside for use by that Land Clearance Commission from the appropriation to be provided for this Act the amount so approved, and the Chairman of the State Housing Board shall thereupon notify the Land Clearance Commission and the presiding officer of the municipality within which such allocation is to be expended of the amounts of such allocation. If the aggregate of the amounts so allocated and set aside by the State Housing Board pursuant to applications

for grants presented within said one hundred twenty (120) day period does not exhaust said appropriation, the State Housing Board shall consider applications for grants presented subsequent to said one hundred twenty (120) day period in the manner aforesaid in the order of their presentation. Upon the expiration of eighteen (18) months after the effective date of this Act that part of any allocation made to a Land Clearance Commission which has not been previously paid over to that Commission pursuant to the provisions hereof shall lapse and the State Housing Board may thereafter, from time to time, use said monies in making allocations to Land Clearance Commissions in the manner herein provided the same as if said monies had never been allocated.

No part of the amount allocated and set aside to a Land Clearance Commission shall be paid out to that Commission except to the extent necessary to match monies paid to that Commission by the municipality for whose benefit the allocation was made, and then only in an amount equal to, but not exceeding, the amount so paid to the Commission by the municipality. Whenever and as often as a municipality for whose benefit an allocation has been made by the State Housing Board shall pay to the Land Clearance Commission an amount of money to be matched out of funds so allocated, the presiding officer of such municipality shall notify the State Housing Board in writing of the amount so paid to the Land Clearance Commission and the Chairman of the State Housing Board shall thereupon certify to the Auditor of Public Accounts for payment to the Land Clearance Commission from the appropriation to be made available for this Act an amount equal to the payment so made by the municipality and such amount shall thereupon be paid to the Land Clearance Commission for said appropriation. Any amount so paid to a Land Clear-

ance Commission shall be charged by the State Housing Commission against the allocation made to that Commission. The aggregate of the amounts so certified by the Chairman of the State Housing Board to the Auditor of Public Accounts for payment to any Land Clearance Commission shall not exceed the amount of the allocation or allocations previously made to that Land Clearance Commission. All amounts paid to a Land Clearance Commission by a municipality and by the State pursuant to the provisions of this Section shall be deposited in a separate fund by the Commission and shall be used solely for the purposes specified in Sections 9, 10, 14, 15 and 16 hereof and such other purposes as are authorized by this Act.

Sec. 22. If an allocation from the monies to be appropriated for this Act is made and set aside to a Land Clearance Commission having the same area of operation as a Housing Authority and that Housing Authority has received a grant of state funds from the appropriation made in "An Act to promote the improvement of housing", approved July 26, 1945, then all or any portion of the unexpended and unobligated part of any such grant to the Housing Authority may be used by the State Housing Board, with the consent of the Housing Authority, as an additional allocation to the Land Clearance Commission to be used by the State Housing Board in matching monies paid by the municipality into the separate fund referred to in Section 21 hereof, but only to the extent that the monies paid by the municipality and deposited in said separate fund exceed the amount 18th day of November, 1948, by the Redevelopment of an of the allocation made to that Land Clearance Commission under Section 21 hereof.

Sec. 23. For the purpose of aiding and cooperating with the Land Clearance Commissions in accomplishing the objective of this Act, any state public body (city, village,

incorporated town, county, municipal corporation, commission, district, authority, or public body of the State) may cause parks, playgrounds, water, sewer or drainage facilities to be furnished adjacent to or in connection with the redevelopment project; and, any municipality within the area of operation of a Land Clearance Commission may assign or loan any of its employes to that Land Clearance Commission.

Sec. 24. Every municipality is authorized and empowered to incur indebtedness and issue bonds in such amount or amounts as the governing body of the municipality deems necessary for the purpose of raising funds to be paid to a Land Clearance Commission whose area of operation includes that municipality in aid of the eradication and elimination of slum and blighted areas within that municipality. The ordinance authorizing the issuance of such bonds shall specify the total amount of bonds to be issued, the form and denomination of the bonds, the date they are to bear, the place at which they are payable, the date or dates of maturity, which shall not be later than twenty (20) years after the date of the bonds bear, the rate of interest which shall not exceed four per centum (4%) per annum and the dates on which interest is payable. The bonds shall be executed by such officials as may be provided in the ordinance authorizing their issue. They may be made registerable as to principal and may be made callable on any interest payment date at par and accrued interest after notice has been given at the time and in the manner provided in the bond ordinance. The bonds shall remain valid even though one or more of the officers executing the bonds ceases to hold his or their offices before the bonds are delivered.

The bonds shall be sold to the highest and best bidder at not less than their par value and accrued interest. The

municipality shall, from time to time as bonds are to be sold, advertise for proposals to purchase the bonds. Each such advertisement may be published in such newspapers and journals as the governing body of the municipality may determine but must be published at least once in a newspaper having a general circulation in the municipality at least ten days prior to the date of the opening of the bids. The municipality may reserve the right to reject any and all bids and readvertise for bids.

The ordinance authorizing the bonds shall prescribe all the details thereof and shall provide for the levy and collection of a direct annual tax upon all the taxable property within the municipality sufficient to pay the principal thereof and interest thereon as it matures. This tax shall be in addition to and exclusive of the maximum of all other taxes authorized to be levied by the municipality. Tax limitations provided by other statutes of this State shall not apply to taxes levied for payment of these bonds. A certified copy of the bond ordinance shall be filed with the County Clerk of the county in which the municipality or any portion thereof is situated and shall constitute the authority for the extension and collection of such taxes.

If there is no default in payment of the principal or interest upon the bonds, and if after setting aside a sum of money equal to the amount of interest that will accrue on the bonds and a sum of money equal to the amount of principal that will become due thereon within the next six (6) months' period, the treasurer and comptroller, if there is a comptroller, of the municipality shall use the money available from the proceeds of the taxes levied for the payment of the bonds in calling them for payment, if by their terms they are subject to redemption. A municipality may provide in the bond ordinance that whenever the municipality is not in default in payment of the principal of or

interest on the bonds and has set aside the sums of money provided in this paragraph for interest accruing and principal maturing within the next six (6) months' period, the money available from the proceeds of taxes levied for the payment of these bonds shall be used first in the purchase of the bonds at the lowest price obtainable, but not to exceed their par value and accrued interest, after sealed tenders for their purchase have been advertised for as may be directed by the corporate authorities thereof.

Bonds called for payment and paid or purchased under this Section shall be marked paid and cancelled.

Whenever any bonds are purchased or redeemed and cancelled, the taxes thereafter to be extended for payment of the principal of and interest on the remainder of the issue shall be reduced in an amount equal to the principal of and the interest that would have thereafter accrued upon the bonds so cancelled. A resolution shall be adopted by the corporate authorities of the municipality finding these facts. A certified copy of this resolution shall be filed with the County Clerk of the county in which the municipality or any portion thereof, is situated, whereupon the County Clerk shall reduce and extend such tax levies in accordance therewith.

The ordinance may provide for the creation of a sinking fund to consist of the proceeds of taxes levied for the payment of the principal of and interest upon these bonds. This bond shall be faithfully applied to the purchase or payment of the bonds, and interest thereon, issued pursuant to the provisions of this Act.

Bonds issued by a municipality for the purposes herein set forth shall not be in excess of any existing statutory limitation on municipal indebtedness, nor shall any municipality by the issuance of the bonds provided for in this

Act be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness in the aggregate exceeding five per centum (5%) on the value of taxable property therein to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness.

No ordinance providing for the issuance of bonds shall be effective until it has been submitted to referendum of, and approved by the electors of that municipality in accordance with the provisions of Sections 17-1 and 17-2 of the "Revised Cities and Villages Act", approved August 15, 1941, as amended.

In addition to the power to issue bonds provided, every municipality is authorized and empowered to appropriate and pay to a Land Clearance Commission, whose area of operation includes that municipality, available funds for the eradication and elimination of slum and blighted areas in that municipality in the manner provided in this Act, including the proceeds of bonds issued pursuant to the corporate powers specified in Section 23-103.1 of the "Revised Cities and Villages Act", approved August 15, 1941, as amended.

A municipality may make payments to a Land Clearance Commission for the purposes specified in this Act even though such payments are not to be matched by state funds.

Every municipality is authorized to accept donations from individuals, associations and corporations and to pay the same into the separate fund of the Land Clearance Commission whose area of operation includes such municipality.

Sec. 25. With the approval of the State Housing Board and the governing body of the municipality, a Land Clearance Commission may use any of the funds arising from

the sale of any property acquired by the use of the separate fund herein provided for in furtherance of the eradication and elimination of other slum and blighted areas in such municipality in the manner provided in this Act. Upon a certificate presented by a Land Clearance Commission to the State Housing Board to the effect that such Commission has completed any project undertaken by it under this Act and that it has no other or further duties to perform in its area of operation, the State Housing Board shall require the Land Clearance Commission to repay to the State of Illinois and to the municipality included in the area of its operation any unexpended and unobligated funds of the Commission, in the proportion in which grants were made to such Commission by the State and the municipality, including therein grants, if any, made by the State to the Commission pursuant to any appropriations for slum and blight eradication, land clearance or other authorized purpose. Grants made pursuant to Section 22 shall be considered as grants made by the State.

Sec. 26. The State Housing Board may, in its discretion, prescribe methods and forms for keeping accounts, records, and books to be used by a Commission, and prescribe accounts to which particular outlays and receipts shall be entered, charged, or credited. The State Housing Board may require a Commission to file periodical reports not oftener than quarterly covering its operations and activities in a form prescribed by the State Housing Board and may, from time to time, require specific answers to questions upon which the State Housing Board may desire information. Copies of all such reports shall be submitted to the governing body of the municipality or county, as the case may be, of the area of operation of the Commission.

The State Housing Board or governing body of the Municipality or the county which initiated the creation of a Land Clearance Commission may investigate the conditions and affairs of the Commission, its dealings, transactions or relationships, and may through its members or employees examine its books, contracts, records, documents and papers.

In its annual report to the Governor the State Housing Board shall present a detailed statement regarding the fund of each Commission to which a grant has been made and the uses to which such fund has been applied.

Sec. 27. This Act shall be deemed to create an additional and alternative method for the eradication of slum and blighted areas. This Act shall not be deemed to alter, amend or repeal any other statute having to do with such matters, but the provisions of this Act shall be deemed exclusive, in respect to the proceedings, actions or notices shall be required for the doing, or as a condition precedent for the doing, of any of the things herein authorized, except such as are prescribed by this Act.

Sec. 28. This Act being necessary for and intended to secure the public health, safety and welfare, the provisions of this Act shall be liberally construed to effectuate the provisions hereof.

Sec. 29. If any section, clause, sentence, paragraph, part or provision of this Act shall be held to be invalid by any Court, it shall be conclusively presumed that the remaining portions of this Act would have been passed by the Legislature without such invalid section, clause, sentence, paragraph, part or provision.

Approved, July 2, 1947.

APPENDIX "C".

STATUTES.

ILL. REV. STATS. 1949, Chap. 37, Sec. 72.1.

"The County of Cook shall be one judicial circuit • • •."

ILL. REV. STATS. 1949, Chap. 37. Sec. 72.29.

"INTERCHANGE OF JUDGES. • • • Judges of the several circuit courts of this state may interchange with each other and with the judges of the Superior Court of Cook County, and the judges of said Circuit Court and of the Superior Court of Cook County may hold court or any branch of the court for each other and perform each other's duties, where they find it necessary or convenient."

ILL. REV. STATS. 1949, Chap. 37, Sec. 72.30.

"Whenever any two judges of any judicial circuit in the State of Illinois, exclusive of Cook County, a majority of the judges of the Circuit Court of Cook County • • • request and state in writing to the Supreme Court of this state, or to any Judge thereof in vacation that the number of cases upon the dockets of their respective courts is such as to require the assistance of a judge or judges not residing within such judicial circuit or the County of Cook, as the case may be, the Supreme Court, or the Judge thereof in vacation to whom such request and statement is made • • • may, by a written order, assign any judge of the Circuit Court of the State, or any judge of the Superior Court of Cook County to hold court in any of the circuit courts of the state or in the Superior Court of Cook County as the case may be, • • •."

ILL. REV. STATS. 1949, Chap. 37, Sec. 333, Sub-Sec. 1.

"The several courts of record now existing in and for cities and such as may hereafter be established in and for any city, • • • shall severally be styled 'city' • • • court of • • •, and shall be courts of general jurisdiction in and for

cities, villages and towns wherein they are respectively established."

Ill. Rev. Stats. 1949, Chap. 37, Sec. 335.

"Such court shall be held in the city, village or town as may be provided by the corporate authority."

Ill. Rev. Stats. 1949, Chap. 37, Sec. 337.

"Judges of said court shall be regularly licensed attorneys and shall be elected by qualified voters of the city, village or town in the same manner that city, village or town officers of such city, village, or town are elected."

Ill. Rev. Stats. 1949, Chap. 37, Sec. 338.

"Interchange. Such judges may, with like privileges as the judges of circuit, superior and county courts, interchange with each other, and with the judges of circuit, superior, county and probate courts of Cook and other counties, and may hold court for each other, and for judges of circuit, superior, county and probate courts of Cook and other counties, and perform each other's duties and the duties of judges of circuit, superior, county and probate courts of Cook and other counties, when they find it necessary or convenient."

Constitution of 1870, Art. 6, Sec. 1.

"The judicial powers, except as in this article is otherwise provided, shall be vested in one supreme court, circuit courts, county courts, justices of the peace, police magistrates, and such courts as may be created by law in and for cities and incorporated towns."

Constitution of 1870, Art. 6, Sec. 17.

"No person shall be eligible to the office of judge of the circuit or any inferior court, or to membership in the 'board of county commissioners,' unless he shall be at least 25 years of age, and a citizen of the United States, nor unless

he shall have resided in this state five years next preceding his election, and be a resident of the circuit, county, city, cities or incorporated town in which he shall be elected."

RULES OF THE CIRCUIT COURT.

The rules of organization of the Circuit Court, effective June 1, 1950, and particularly Rule I, which in substance, shows that:

"For the more convenient dispatch of business, the Circuit Court of Cook County shall be so organized as to sit in two divisions, * * * the Chancery Division and the Law Division. * * * The Law Divison shall be composed of as many of the remaining judges of the court as have not been assigned to the Criminal Court of Cook County, or designated to sit in the Appellate Court of the First District."

Rule II, regarding the assignment of judges of the Circuit Court, Section 1:

"Assignment of Judges to the Divisions before mentioned shall be made annually by a vote of the majority of the judges of this court in meeting assembled, from among the judges not designated to sit in the Appellate Court of the First District."

Rule III, Section 1, minutely describes the duties of the executive committee.

Section 2, of Rule III, in addition to the powers conferred upon it, and by the foregoing provisions or by the rules of this Court as such executive committee shall have the power to make, alter and amend all rules of this court by and with a concurrence of a majority of all the judges to regulate the administration of the court in such a manner not consistent with these rules of organization, or the rules of this court, or in derogation of the authority remaining vested in the individual judges.

FILED
JUL 5 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 125

INEZ WHITE, ET AL.,
Petitioners,

vs.

CHICAGO LAND CLEARANCE COMMISSION,
A MUNICIPAL CORPORATION,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

Statement Made Pursuant to Rule 27.

A. The opinion of the Supreme Court of Illinois (Rec. 91, petitioners' Brief 37) is reported in 411 Ill. 310, 104 N. E. 2d 236. A short opinion by the Supreme Court of Illinois in the same case, dismissing an attempted appeal from a non-appealable order, is published in 409 Ill. 290, 100 N. E. 2d 760. While the present petition is not directed to the latter case it seems proper to refer to it here.

B. Petitioners state that the jurisdiction of this Court is invoked under 28 U. S. C., Section 344, sub-sections a and b. This would appear to be a citation of a former statute, the substance of which now appears in other sections.

II.

As to Petitioners' Statement of the Case.

It appears from the index to the petition that the statement of the case is included in the section of the petition entitled "Jurisdiction" beginning on page 2. This statement, which consists of reference to pleadings, including verbatim quotations from some of them and argumentative paraphrases from others, is supplemented in the interest of brevity and clarity.

Statement of the Case.

The Chicago Land Clearance Commission is a municipal corporation created pursuant to a statute of Illinois known as "Blighted Areas Redevelopment Act of 1947," the text of which appears at page 43, *et seq.*, of the petition. This is a slum clearance statute which provides for the acquisition and clearance by the Commission of slum and blighted areas and for the sale of the property so acquired for private redevelopment under conditions and limitations set forth in the statute. The statute gives the Commission the power of eminent domain.

In the present case the Commission determined that a certain area on the near south side of Chicago was a slum and blighted area that should be acquired to be cleared and redeveloped under the provisions of the statute. As required by the statute this determination was approved by the State Housing Board of the State of Illinois, an administrative body having certain functions and duties in the field of housing, and also by the City Council of the City of Chicago.

Several separate condemnation suits were filed in the Circuit Court of Cook County, Illinois, some of which were

later consolidated into the present case. The record presented to the Supreme Court of Illinois and the abstract in the present case do not show all of the petitions to condemn, and the names of the several parties defendant and the legal description of each parcel of real estate are omitted from the abstract of the one petition that is included.

Petitioners here, who were respondents in the condemnation suit, appeared and filed motions presenting issues of fact and law which attacked the right of the Commission to maintain this suit. Under Illinois eminent domain procedure such motions are heard and decided by the court prior to the jury trial which by the Illinois Constitution fixes the amount of compensation.

In accordance with this procedure, the motions in the present case were heard by the court prior to the trials at which the amount of compensation was fixed. At the hearing on the motions, evidence was presented as to the issues of fact. At the termination of the hearing the court entered an order (Rec. 59) finding the issues of fact in favor of the Commission, upholding the constitutionality of the statute and denying and overruling the motions.

Respondents (petitioners here) filed notice of appeal from these orders before the trials to fix compensation. Under the existing circumstances the appeal would not have been reached in regular course by the Supreme Court of Illinois for several months. The trial court held that the appeal was premature and proceeded with jury trials to fix compensation. Counsel for respondents (petitioners here) refused to participate in these trials. In order to obviate this unsatisfactory situation the Commission made use of a summary procedure and filed a short record together with a motion to dismiss the appeal. This motion was granted by the Supreme Court of Illinois, *Chicago*

Land Clearance Commission v. *White, et al.*, 409 Ill. 290, 100 N. E. 2d 760. After it was determined to follow the summary procedure the trial court entered an order for a supersedeas, and thereafter all hearings upon the issue of compensation were delayed until the mandate of the Supreme Court dismissing the appeal was filed.

After final judgments were entered another appeal was taken to the Supreme Court of Illinois. No issues of fact were presented to that court and no error was assigned as to the amount of compensation fixed by the jury in any case. This appeal resulted in the judgment to which the present petition for certiorari is directed.

As to Questions Presented.

The petition (p. 12) lists questions which petitioners say are presented by the record in the present case. Respondent denies that the record presents any federal question.

SUMMARY OF ARGUMENT.

1. The record in the present case shows that no constitutional right of any of petitioners was violated at any stage of the proceedings.

2. Statutes similar to that involved in the present case have been uniformly upheld as against state and federal constitutional objections.

3. None of the reasons urged by petitioners for the granting of the writ is valid. Reasons refuted seriatim.

ARGUMENT.

1. The record in the present case shows that no constitutional right of any of petitioners was violated at any stage of the proceedings.

The record shows that petitioners were served with process, appeared and were heard upon every issue they saw fit to raise both in the trial court and the Supreme Court of Illinois. (See Rec. 23-29 for issues raised by petitioners.) Before their property is taken they will be paid the just compensation as fixed by the jury for each parcel of real estate in accordance with the Constitution and statutes of the State of Illinois.

Related Proceedings.

This is not the first time that some of petitioners have presented the question of the constitutionality of the statute to the courts of the United States. In the case entitled "*Robinette, et al.* v. *Chicago Land Clearance Commission, et al.,*" Docket No. 50 C 68, in the United States District Court for the Northern District of Illinois, some of petitioners and others, represented by one of their present counsel, filed a complaint praying, *inter alia,* for the convening of a three-judge court to pass upon the constitutionality of the statute "Blighted Areas Redevelopment Act of 1947." The case was assigned to Judge Campbell and, after consideration, he dismissed the suit and refused to convene the three-judge court for the reason that there was no debatable federal constitutional question involved.

Some months later the unsuccessful plaintiffs filed a proceeding in the Supreme Court of the United States entitled

"Robinette, et al. v. *William J. Campbell, District Judge, etc.,"* Docket No. 261 Misc., October Term, 1951. This proceeding was a petition for leave to file a writ of mandamus to compel Julge Campbell to convene a three-judge court to pass upon the constitutionality of the statute in question. The Supreme Court of the United States on March 3, 1952 without opinion denied leave to file. 342 U. S. 940; 72 S. Ct. Rep. 563.

2. Statutes similar to that involved in the present case have been uniformly upheld as against state and federal constitutional objections.

Within the past years almost every state has enacted slum clearance and housing legislation. Notes in 130 A. L. R. 1069 and 172 A. L. R. 966 show that practically all states have held slum clearance to be a valid public purpose, and if procedural requirements of due process are met there can be no possible federal constitutional question.

The rule in the federal courts is the same. The Federal Housing Act, 42 U. S. C. A. 1401 *et seq.*, contains some provisions with respect to slum clearance and this Act was held constitutional in *City of Cleveland* v. *United States*, 323 U. S. 329. The fact that after the slum clearance is accomplished the premises are sold for redevelopment pursuant to plan, under certain limitations, does not affect the constitutionality of the statute. See cases cited in 172 A. L. R. at 966. See also in addition to Illinois cases cited in the opinion of the Supreme Court of Illinois, which is the basis for the judgment here sought to be reviewed, the following:

Belovsky v. *Redevelopment Authority*, 357 Pa. 329, 54 Atl. 2d 277.

Schenk v. *City of Pittsburgh*, 364 Pa. 31, 70 Atl. 2d 612.

Nashville Housing Authority v. *City of Nashville*, 237 S. W. 2d 946.

See also two recent cases of the United States Supreme Court which state relevant principles of eminent domain law:

Burt v. *Pittsburgh*, 340 U. S. 802.
U. S. ex rel. T. V. A. v. *Welch*, 327 U. S. 546.

3. None of the reasons urged by petitioners for the granting of the writ is valid. Reasons refuted seriatim.

On page 14 of petitioners' brief are seven statements entitled "Specifications" and from pages 16 to 36 these specifications are considered separately as reasons for the granting of the writ in the present case. These reasons are hereinafter referred to in order.

(1)(2) The first reason urged is that Judge Berkowitz, City Judge of Mattoon, Illinois, improperly presided at the trial in the Circuit Court of Cook County. The second reason urged is that the court which tried the case was not a properly constituted circuit court under the Constitution of the State of Illinois. Both of these contentions are expressly considered and disposed of in the opinion of the Supreme Court of Illinois, which held that Judge Berkowitz as the duly qualified judge of the City Court of Mattoon, Illinois, could under the statute authorizing the interchange of city and circuit judges hold court in the Circuit Court of Cook County.

This decision is obviously correct. But even if the Supreme Court of Illinois erred in so holding, no federal question would be presented by such error. In the case of *In re Manning*, 139 U. S. 504 (1890), the syllabus is as follows:

> A person is not denied the equal protection of the laws, nor deprived of liberty without due process of

> law, in violation of the Fourteenth Amendment of the Constitution, by being tried and sentenced to imprisonment by a judge who, although appointed by the governor without authority, is a judge *de facto* of a court *de jure*, by the law of the state as declared by its highest court.

That was a criminal case, but the legal principle would control in the present case.

(3) The third reason urged for granting the writ is that the motion and demand for a jury trial should have been allowed. Under the law of Illinois a property owner in an eminent domain case is entitled to have his compensation fixed by a jury. The right of the petitioner in the case to proceed is a preliminary question to be determined by the court.

This present contention of petitioners presents no possible federal question. Due process does not require a jury trial at any stage of a condemnation proceeding. *Bauman* v. *Ross*, 167 U. S. 548 at 593; *Sears* v. *Akron*, 246 U. S. 242. Due process does not require a jury trial in an eminent domain case any more than in a chancery case.

(4) The fourth reason urged for granting the writ is that the trial court should not have proceeded with the case after a perfected appeal to the Supreme Court of Illinois. This contention presents no federal question. Petitioners filed a notice of appeal from an interlocutory order, and thereafter there were jury trials fixing compensation and final judgments entered. No question was raised in the Supreme Court of Illinois and none is raised in this Court as to the adequacy of compensation, which was the only issue decided at the trials had after the abortive appeal was filed. Counsel for petitioners here refused to participate in trials to fix compensation. When, in order to avoid delay, it was determined that the Commission (respondent here) would file a short record in

the Supreme Court of Illinois and secure a dismissal of the appeal, Judge Berkowitz, the trial judge, entered an order allowing supersedeas, and no further cases were tried until the appeal was dismissed.

Petitioners, at page 27 of the petition, quote a portion of the opinion of the Supreme Court of Illinois, certain omissions being indicated by asterisks. The entire quotation with the omitted portion italicised (Rec. 95) is:

> • • • it was apparent to Judge Berkowitz that appellants' attempt to appeal was premature and not taken from a final and appealable order. *The delay was entailed by a premature appeal. Appealing from interlocutory orders would necessarily postpone indefinitely the final determination of any case. It is particularly important that such measures of obstruction should be obviated in a condemnation proceeding where frequently the time element is an important factor.* We are of the opinion that the trial court very properly refused to permit the unauthorized appeal to deter its progress in the disposition of all remaining questions and issues in the case.

The legal principle which refuses to permit a case to be delayed by appeals from interlocutory orders does not deny any constitutional right to the party appealing from such orders. There is nothing in the cited case, *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, to the contrary.

(5) The fifth reason urged is that the "Blighted Areas Redevelopment Act of 1947" is unconstitutional because it grants the Commission arbitrary and capricious power. There is no justification for the use of such language. The statute grants no such power. The Commission has a right to investigate and determine that a slum and blighted area should be acquired by eminent domain or purchase for clearance and redevelopment in accordance with the statute. Before proceedings can be instituted this deter-

mination must be approved by the State Housing Board and the City Council of the city in which the property is located. Later, during the course of the eminent domain proceedings, the property owner has the right to be heard as to the propriety of the determination, and in the present case petitioners availed themselves at length of that right. No federal question is presented by this contention.

(6) The sixth reason urged for granting the writ is that the statute denies petitioners' rights guaranteed under the Fourteenth Amendment. The first point made is that the equal protection clause of the Constitution of the United States applies to administrative action. It is conceded that it does in a proper case, but the proposition is immaterial here.

The next point urged is that the due process clause is violated because the statute does not provide for notice. Petitioners were served with process as respondents in the condemnation cases, appeared by counsel, were heard at length, and presented in court all contentions they cared to present before their property was taken and paid for.

It is next contended that an arbitrary and malicious action cannot constitute due process. It is agreed that it does not, but there was no arbitrary and malicious action involved in the present case. The use of such words is unjustified.

It is next contended that the statute abridges the privileges and immunities of citizens. This is obviously a misconception. Petitioners were respondents in a condemnation case. They were accorded all of their constitutional and statutory rights, and the record so shows. A citizen does not have any privilege or immunity not to have his property taken for a public purpose in an eminent domain proceeding.

The next contention is that the statute takes private

property for private use. The opinion of the Supreme Court of Illinois answers this contention directly and clearly, and the proposition will not be labored here.

(7) The seventh and last reason urged for granting of the writ is the general proposition that the Supreme Court of Illinois erred. It is, of course, elementary that the Supreme Court of the United States does not sit as a court of review over the Supreme Court of Illinois unless federal questions are involved. The opinion of the Supreme Court of Illinois speaks for itself. No federal question is involved.

As to Authorities Cited by Petitioners.

It would unduly lengthen this brief to refer to each of the authorities cited by petitioners. These do nothing more than state general principles about which there is no dispute but which have no application to the case before the Court. There is not a single authority cited which can be construed as in the slightest degree implying that any federal constitutional right of petitioners was denied them in the present case.

CONCLUSION.

It is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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